U. S. DEPARTMENT OF COMMERCE
BUREAU OF FOREIGN COMMERCE
WASHINGTON 25, D. C.

December 27, 1960

IN REPLY REFER TO:
17-FC-TLT
File 23-543

DOC Exemption Letter In ERU File

Mr. Robert Amory, Jr.
Deputy Director (Intelligence)
Central Intelligence Agency
Washington 25, D. C.

Dear Mr. Amory:

Re: Biddle, Sawyer & Company, Ltd., London, England
File No. 23-543

Following receipt of your letter of July 22, 1960, to Mr. Loring K. Macy, Director, Bureau of Foreign Commerce, we had a contested hearing of the Biddle, Sawyer case before our Compliance Commissioner. After the Commissioner studied the evidence, we asked him to take the unusual course of preparing his report of the facts, but without the customary additional section dealing with his recommendations regarding the type of order to be issued.

Now that the Commissioner has completed his report, we are taking the liberty of submitting the enclosed copy to you, in confidence, for your examination. We would appreciate any comments or suggestions you may be in a position to give us on behalf of your agency as to the kind of sanction that ought to be imposed in this case consistant with the evidence and with the matters outlined in your letter.

As you know, we are empowered in any case of proven violations to issue an order denying U. S. export privileges for such period of time as is deemed appropriate, ranging up to the duration of U. S. export controls. We also have the authority to dismiss a case without publicity for national interest reasons, or to close it with an unpublished warning letter or a published censure. The important point in any disposition is the justification in our record, and, with respect to a published disposition, that the published statement of reasons justifies the results and is consistent with our precedents. In this case, the proven facts would, on the basis of our precedents warrant an order denying export privileges for a substantial period of time. The considerations expressed

in your letter substantially affect our judgment, however, and cause us to wonder whether our normal disposition, or some other disposition, would be more beneficial to the national interest. In addition, the facts found by the Commissioner are of such nature as to lead us also to wonder whether your agency might wish to consider again the views expressed in your letter in the light of these facts.

While, we would, for the sake of the record, prefer a written expression of your agency's views, we would be happy to discuss the matter with you orally if that course is deemed more appropriate by your agency. We look forward to hearing from you upon this subject at your early convenience.

Sincerely yours,

Frank W. Shaeffer/jcs.

Frank W. Shaeffer, Director
Office of Export Supply,
Bureau of Foreign Commerce

1/3/47-93

Enclosure:

U. S. DEPARTMENT OF COMMERCE
Bureau of Foreign Commerce
Washington 25, D. C.

In the Matter of

BIDDLE, SAWYER & CO., LTD.
4 Crafton Street
London, W.1, England

Respondent

COMPLIANCE COMMISSIONER'S REPORT AND RECOMMENDATION

To the Director, Office of Export Supply:

By charging letter dated August 26, 1959, the respondent was charged by the Director of the Investigation Staff, Bureau of Foreign Commerce, with having violated the Export Control Act of 1949, as amended, and the regulations promulgated thereunder. Since the date of the charging letter the respondent's name has been changed to B. S. (Holdings) Limited. It appears, however, that the change in name has not been accompanied by any change in control and the change of name is recited herein merely to complete the record and is not deemed significant.

In substance, the charges (in two counts) are, first, that the respondent in knowing violation of the Export Control Act ordered from S. A. Ejice, Brussels, Belgium, during February 1955, 10,000 bottles U. S. origin aureomycin to be exported from the United States to Ejice and that upon receipt of the aureomycin the respondent caused the commodity to be reexported to it in England and thereafter the respondent transshipped the commodity to communist China; and, secondly, that between January and September 1957, the respondent ordered from Muller & Pick of Amsterdam, Holland, the following United States origin pharmaceuticals which were exported from the United States under General License GRO:

750 Ampoules Arfonad
200 bottles Arliden Tablets
300 vials Naodrol
110 lbs. Terramix
600 bottles Diamox Tablets

100 vials Ilotycin
200 bottles Viocin

Concerning both charges, it is alleged that the respondent, with full knowledge of the United States prohibition against the exportation, reexportation, transshipment or diversion of United States origin commodities to communist China and the Soviet Union without prior authorization from United States authorities, nonetheless knowingly caused the aforesaid pharmaceuticals to be transshipped and diverted to communist China and the Soviet Union.

Following service of the charging letter respondent's solicitors, Tarlo, Lyons & Co., London, W. C.2, England, by cablegram and letter both dated September 9, 1959, requested a delay in the matter because of the absence from London of the partner most familiar with the aforesaid transactions. This request was granted. Under date of October 30, 1959, Tarlo, Lyons & Co. filed a reply to the charging letter. The reply was accompanied by statements (unsworn) from two of the respondent's employees, Roy Roland Cooper, an export clerk, and Francis William Thetford, the Export Manager of Biddle, Sawyer's Dept. "F", wherein they undertook to assume responsibility for the unauthorized transshipments described above.

On May 9, 1960, Aaron Tollin, Esquire, the then assigned Compliance Commissioner in this matter, notified the respondent by mail that it had been set down for hearing on May 25, 1960. A copy of this notice was forwarded to Robert L. Levine, Esquire, 253 Broadway, New York, New York, since Mr. Levine had acted as correspondent for Tarlo, Lyons & Co. in delivering the reply to the charging letter, although Levine had not at the time entered an appearance in the matter. On May 20, 1960, Mr. Levine in a letter addressed to the Compliance Commissioner entered his appearance for the respondent and requested an additional continuance to June 1, 1960. This request was also granted. It was after this, on May 25, 1960, that I was designated Compliance Commissioner in the matter.

I convened a hearing in the matter on June 1, 1960, at 10:20 A.M. in Room 1309, Department of Commerce Building, Washington, D. C. At that time Mr. Levine appeared and requested an additional continuance of 60 days. He gave as his reasons that there had been changes in the structure of the respondent since the charging letter, e.g. change of name, transfer of assets, change of London attorneys, etc., and that accordingly he wished to consult with the respondent in London before hearing. After some discussion I continued the matter for 45 days to July 11, 1960, with the understanding that I would grant an additional continuance to August 1, 1960, upon good cause shown in the interim. I advised Mr. Levine that I would grant no continuances beyond August 1, 1960.

By letter of July 7, 1960, addressed to me, Mr. Levine

advised that he would be ready for hearing on July 25, 1960, and by letter and notice dated July 11, 1960, and delivered to Mr. Levine, I set the matter down for hearing on July 25, 1960.

A hearing was convened by me at 10:10 A.M. on July 26, 1960, in Room 1309 of the Commerce Building, Washington, D.C., and appearances were entered by Robert L. Levine, Esquire, hereinabove referred to as Mr. Levine, and by his son Lawrence Levine, Esquire, who is a lawyer and is associated with his father in the practice of law. Although present, Lawrence Levine did not participate in the hearing and accordingly any further reference herein to "Mr. Levine" will refer to Mr. Robert Levine.

The nature of the defense raised by Mr. Levine can be quickly described. It was in the nature of a plea of confession and avoidance. He admitted the transactions by the respondent set forth in the charging letter, but denied that the respondent had knowledge of the germane provisions of the Export Control Act and rules promulgated thereunder, and further denied any intent on the part of respondent to violate the Act or the rules (Tr.3). In an attempt to show respondent's lack of knowledge and intent (Tr.5), he stated that the respondent's total annual business amounted to a gross figure of some 15 or 16 million dollars of which less than $100,000 was done in the United States. He attempted to shift responsibility for the transactions to the aforementioned "clerks" (Cooper and Thetford), stating that they were no longer connected with the respondent and adding that ". . . at no time did any director nor (sic) any senior employee of the respondent have knowledge of the United States regulations and restrictions appearing on the bills of lading covering the goods from the United States to Europe . . ." (Tr.6.) Mr. Levine also placed great emphasis on the high regard with which the respondent is held in the"world community." (Tr.7.)

The Government's case consisted largely of some 26 Exhibits which, in my opinion, completely destroyed the "defense" raised by Mr. Levine, if indeed it was a defense. I do not propose to describe all of these Exhibits in detail herein, but will refer to certain of them as I deem appropriate.

Government's Exhibits Nos. 3 and 4 were, respectively, an order of the Office of International Trade, dated August 25, 1949, which named one E. Pollak as a respondent and an affidavit of the same Pollak. The order had to do with the misuse of a validated license which had been issued by the predecessor of the Bureau of Foreign Commerce, the Office of International Trade. It is unnecessary to examine into the merits of the 1949 proceeding. The point here is that it is admitted that the same E. Pollak named therein was, at the time of the transactions set forth in the charging letter, a director of respondent (Tr.12.). This fact certainly bears upon the company's claim of lack of knowledge of U. S. Controls.

Also bearing on Count I, was Government's Exhibit 5, on communication from the American Embassy, London, dated June 1, 1953. The message reported that the Embassy had asked Biddle, Sawyer about its purchase of 25,000 vials of penicellin from a West German firm and reshipment of the commodity to communist China. The Embassy had asked the company whether the antibiotic was of United States origin. In response Biddle Sawyer did reply by letter to the Embassy dated May 28, 1953. That portion of the company's letter reproduced in the Embassy's message was:

> "We would under no circumstances have bought penicillin of American origin from them for shipment to any part of the world."

At the hearing, after observation by counsel for the respondent that said exhibit was not the best evidence, the Government requested counsel for the respondent to produce the full text of the 1953 Biddle, Sawyer letter from the files of Biddle, Sawyer, as the Government was unable to do so inasmuch as the original had been reported either lost or destroyed by the Embassy. Counsel for the respondent has since advised that he is unable to produce an office copy. Therefore, I have treated Exhibit 5 as the best evidence of this communication. Biddle, Sawyer's 1953 representations to the American Embassy that it would not knowingly buy U. S.—origin pharmaceuticals for shipment to China is most significant when viewed in connection with the Biddle, Sawyer contract with the China National Import and Export Corporation for the aureomycin, subject of Count I. In that contract the Chinese specifically requested U. S.—origin aureomycin.

Government Exhibit 8, a transcript of a communist Chinese Radio Broadcast on February 22, 1955, established that a representative of the respondent company had participated in a British trade mission to communist China in early 1955. It is reasonable to assume that the subject of trade restrictions was discussed during the course of that mission since Government Exhibit 8 stated:

> "The volume of business in engineering products transacted on this occasion was insignificant and the Chinese made it clear that contracts could not be entered into for commodities for which, owing to the embargo, delivery could not be guaranteed. In the meantime, it appears that China is finding other sources of supply for some of these goods both in the Eastern and Western world."

Such evidence again does not directly impute actual knowledge of U. S. export control to the respondent. However, it is observed that the contract (Exhibit 9) between Biddle, Sawyer and the Chinese calling for the supply of U.S.—origin pharmaceuticals was executed

in Peking on February 14, 1955, during the period in which the respondent's representative was a member of the trade mission then in China. Neither respondent's member of the trade mission, nor respondent's signator of the contract appears to have been an uninformed subordinate employee.

The Government made the additional point at the hearing that the contract (Exhibit 9) for U. S.-origin commodities between the respondent and the Chinese carried the following recital:

> "The carrying vessel shall not call at the United States of America and Taiwan prior to its arrival at China port."

This, in my judgment, should have constituted a form of notice to the British firm that at the very least there existed problems in trade between the United States and communist China.

Concerning the 1957 transactions which were the subject of the second count of the charging letter, the Government's Exhibit No. 16 was particularly telling on the question of respondent's knowledge of U. S. export policies. It was a letter of January 24, 1956, fromthe New York Biddle, Sawyer firm to the London Biddle, Sawyer firm concerning a proposed exportation of a large amount of D.D.T. The first page of the letter contains the following paragraph which is here quoted in full:

> "Regarding export licenses, these are notre-- quired if shipment is made to West European or friendly countries. If the ultimate destination, however, is Iron Curtain countries, we will definitely require a license and to apply for it we will need the name of the ultimate consignee as well as your formal order sheet." (Emphasis mine.)

On page two of the same letter the following paragraph is found. It is here quoted in full:

> "Regarding the Far East (Communist China) we are unable to ascertain from Washington whether or not licenses would be granted. It is our impression that our Authorities may not grant licenses for Communist China; howev er, if you find possib ilities of doing business there at prices, please let us know and we will inquire further in Washington.

It is true, of course, that this letter was not referring to the transactions set forth in the charging letter, but the Exhibit letter makes it transparently clear that respondent prior to the events referred to in the charging letter was generally aware of the existence of the

Export Control Act and the Regulations and, moreover, was well informed concerning the significance of the ultimate consignee in determining the applicability of that Act.

The objection was made by counsel for the respondent that the matters discussed in the above communications related to exportations of commodities from the United States, not the purchase of U. S. origin merchandise from European sources (T.R.58-59). However, I cannot accept the implied premise of this objection, namely that respondent could have reasonably assumed that the United States would permit to be done indirectly what was manifestly prohibited from being done directly. See (T.32).

Thereafter the Government introduced as Exhibit 19 a memorandum dated August 14, 1956, from "B. S. London" to "B. S. New York", and a reply letter from the New York corporation to Biddle, Sawyer, London, dated August 20, 1956. In the memorandum the respondent made the following inquiry:

> "2) Could you consider how one should make application for a Washington license to handle material already domiciled in Antwerp for export to Eastern Europe as, presumably, this license may be slightly different to that which would be granted for a direct export from the U. S. to an Eastern European country."

The United States firm in its reply letter listed six specific items of information which were necessary before a license for this type of transaction discussed could be obtained. Among these requirements was specific disclosure of end-use and the name of the firm and/or Government Agency to whom the goods are being sold. If this procedure had been followed by the U. K. firm in the transactions involved herein there would have been no violation.

This exhibit strongly overpowered the objections voiced by respondent's counsel, but more importantly, it refuted the claims made by the respondent in its answer that it did not know the U. S. policy and regulations controlling the purchase and sale of U. S. origin commodities abroad.

At the hearing, some discussion was had concerning the significance of the term "U.S.P. Specifications" in ordering antibiotics. The relevancy of the discussion lies in the fact that Biddle, Sawyer in ordering certain of the antibiotics referred to in the charging letter from Muller & Pick had required that they be of"U.S.P. Specifications." Counsel for the Government was under the impression that only drugs manufactured in the United States could bear this designation and that, accordingly, Biddle Sawyer must have known that the United States would

be the source of the commodities purchased by Biddle Sawyer from Muller & Pick. Counsel for the respondent thought that the designation "U.S.P." could be applied to any pharmaceutical product meeting United States standards of excellence regardless of the country of its manufacture (Tr.85-86). Since the Compliance Commissioner did not know which position was the correct one, counsel for the respondent undertook to obtain expert testimony in this area and submit it prior to final disposition of this matter. Under date of August 8, 1960, Mr. Levine forwarded to me an affidavit of Chester A. Snell, an employee of Foster D. Snell, Inc., Consulting Chemists and Engineers, 29 West 15th Street, New York 11, New York. From the affidavit it appears that Mr. Snell is a fully qualified expert in this field. He concludes that the designation "U.S.P.," which stands for United States Pharmacopeia, may be applied to drugs of foreign origin but only, it would appear, after they had been tested in the United States to assure that the standard of excellence had been met. Thus it will be seen that this affidavit does not illuminate the matter to any great extent.

Inasmuch as all the orders received by Biddle Sawyer from the Chinese specified "U.S.A. origin" and, since the correspondence relating to the other transactions clearly indicates no doubt as to the U.S.-origin of the pharmaceuticals, this matter of the Pharmacopeia appears to be insignificant.

There remains the matter of the attempt to shift responsibility for the shipments to Cooper and Thetford, the discharged employees. Perhaps a most telling answer is that at the time of the transactions described in the charging letter, Cooper's annual salary with Biddle, Sawyer was approximately $1,960, and Thetford's only slightly more. The "explanations" contained in the statements of Cooper and Thetford and in the reply itself are, it seems to me, unbelievable on their face and nothing was brought forth at the hearing to alter this opinion. To choose just a few at random, consider these:

> ". . .the company asked Ejice to remove all marks showing the supplier of goods. This was not because the company thought there was any restriction against transshipment to China, but because Cooper, the employee concerned, thought it desirable that the Chinese should not know the name of the company's suppliers." (Reply, p.11)

> "In my letter written on behalf of the company to Muller & Pick of the 26th April 1957 I asked them not to disclose to the manufacturers that the Ilotycin was to be sent to Hong Kong. I made this request not because I believed there were any regulations attaching to the goods preventing export to Hong Kong or China, but because it had been my experience even with English companies who had

> associate American companies that for purely commercial reasons they were often reluctant to supply any commodity to a Communist country lest the supplying company might receive adverse publicity in American"(Thetford Statement, p.2.)
>
> ". . .on the 31st July 1957 I did not fully appreciate the telex message, particularly as Steinmann informed me that it would be al— right to ship the goods to Liverpool. . ."

The telex message which Cooper was unable to understand read as follows:

> "Import B ladings show that goods may not be shipped to China provided you can give us an authorization of the U. S.A. authorities." (Cooper Statement, p.5.)

Cooper's further statement (p.4) that he did not have knowledge of restrictions on shipments of antibiotics (diamox) until the end of July 1957, is very questionable. On page 7, when discussing an order for United States origin Viocin placed with Muller & Pick, and ultimately distined for the USSR, Cooper mentioned the Muller & Pick letter of June 26, wherein the Dutch firm said it would have to handle "the business strictly subject to licensing due to a new law at origin." Cooper admitted replying to Muller & Pick on July 1, inquiring "further of them regarding the license position and whether the company should disclose the final destination for the goods."

Then we find from the statements of Thetford and Cooper that each had a separate telephone conversation with Muller & Pick on July 30,1957. Thetford claimed to have discussed an order for diamox tablets which was considered desirable to send to China via England if the shipment was to "go forward without undue delay." He further stated (statement p.5) that there was "some veiled comment about a known situation." Cooper, on page 8 of his statement, said that his call to Miller & Pick was with respect to viocin which the Dutch firm told him could be exported if he could give a statement that the godds were destined for England and not the USSR. Although neither Thetford or Cooper stated that they compared notes regarding their two telephone conversations, it is difficult to believe that they did not do so and draw some obvious conclusions about U. S. Export Control restrictions. In this setting it become extremely difficult to accept Cooper's statement that he did not understand the telex message from Muller & Pick of July 31, especially as there is no record that he asked for an elucidation of it.

While I have here devoted considerable attention to the explanations of Thetford and Cooper, it should be remembered that as early as 1955 the company officials had executed a contract with the

communist Chinese for United States origin aureomycin and we have in the record clear warnings from the American affiliate of Biddle, Sawyer against Sino-Soviet Bloc traffic in United States origin goods.

From the foregoing, I have reached the following findings of fact:

1. At all times hereinafter mentioned respondent, Biddle, Sawyer & Co., Ltd. was engaged in the export-import business in London, England.

2. At all times hereinafter mentioned respondent knew or had reasonable grounds to know that United States law prohibited the export, reexport, transshipment or diversion of U. S. origin commodities to Communist China and also knew that said commodities could not be exported, reexported, transshipped or diverted to Soviet Bloc destinations without specific prior approval from U. S. Government authorities.

3. In February 1955, respondent ordered from S. A. Ejice, Brussels, Belgium, 10,000 bottles of U. S. origin aureomycin to be exported from the U. S. to Ejice.

4. Upon arrival of the aureomycin in Belgium, respondent caused it to be reexported from Belgium to England and thereafter respondent knowingly transshipped the aureomycin to Communist China.

5. Between January and September 1957, respondent ordered, purchased and took delivery from Muller & Pick of Amsterdam, Holland, of the following U. S. origin pharmaceuticals which were exported from the United States under general license GRO:

Jan.24,1957	750 Ampoules Arfonad
Jan. 7,1957	200 bottles Arliden Tablets
Mar.21,1957	300 vials Neodrol
	110 lbs Terramix
Jun.21,1957	200 bottles Diamox Tablets
May 27,1957	400 bottles Diamox Tablets
Sept.4,1957	200 bottles Viocin

6. Thereafter, between February and November 1957, respondent knowingly caused the above-listed six quantities of pharmaceuticals to be transshipped and diverted to Communist China and the Soviet Union.

7. In the conduct described in (1) through (6) above, the respondent knowingly violated Sections 381.2, 381.4 and 381.6 of the Export Regulations.